

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in the U.S. DISTRICT COURT at Seattle, Washington.

SEPTEMBER 1 2016  
WILLIAM M. McCOOL, Clerk  
By [Signature] Deputy

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZACHARY AUGUSTUS SMULSKI,

Defendant.

**CR16-239 RSL**

**INDICTMENT**

The Grand Jury charges that:

**COUNTS 1-3**

**(Wire Fraud)**

**A. Introduction**

At all materials times:

1. Soundpath Health, Inc. ("Soundpath"), was a health care benefit company located in Federal Way, Washington that administered Medicare health insurance plans.
2. ZACHARY SMULSKI was employed as the chief financial officer of Soundpath from approximately September 8, 2008 to April 25, 2012. As the chief financial officer, he owed a fiduciary duty to Soundpath.

1           3.       Trucaris, Inc. ("Trucaris") was a Delaware corporation incorporated on  
2 April 5, 2011. Trucaris filed its registration with the Washington Secretary of State on  
3 October 5, 2011, and therein identified ZACHARY SMULSKI as its President.

4           4.       On or about April 22, 2011, ZACHARY SMULSKI opened a business  
5 economy checking bank account at Bank of America/Merrill Lynch ("account \*5204") in  
6 the name of Trucaris. ZACHARY SMULSKI identified himself on the application for  
7 the account as the chairman of Trucaris and his spouse as the chief financial officer.

8           5.       Marquette Equipment Finance, LLC ("Marquette") was a financing  
9 company located in Midvale, Utah. Marquette provided sale-leaseback financing  
10 services to Soundpath. A sale-leaseback is a transaction in which the owner of assets  
11 sells the assets to an investor and then simultaneously leases the assets back.

12           6.       On or about June 21, 2011, ZACHARY SMULSKI prepared a  
13 memorandum in which he recommended to Soundpath's Executive Finance Committee  
14 that Soundpath enter into a sale-leaseback agreement. ZACHARY SMULSKI  
15 represented that funds received from the sale-leaseback agreement would "be invested  
16 into restricted investment grade securities." Based, in part, on ZACHARY SMULSKI's  
17 representations, Soundpath's Board of Directors gave permission for ZACHARY  
18 SMULSKI to negotiate the sale-leaseback agreement.

19 **B.       Essence of the Scheme and Artifice to Defraud**

20           7.       Beginning at a time unknown, but no later than on or about September 15,  
21 2011, and continuing until on or about April 25, 2012, at Federal Way, within the  
22 Western District of Washington, and elsewhere, ZACHARY SMULSKI knowingly  
23 devised a scheme and artifice to defraud Soundpath and Marquette by means of  
24 materially-false and fraudulent pretenses, representations, and promises, and by means of  
25 the concealment of material facts.

26           8.       The essence of the scheme was for ZACHARY SMULSKI to fraudulently  
27 represent to Soundpath and Marquette that funds obtained from the sale-leaseback  
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1 agreement would be used on Soundpath's behalf and for Soundpath's exclusive benefit.  
2 In truth and fact, ZACHARY SMULSKI diverted over \$1.8 million dollars of the money  
3 from Marquette to an account belonging to a company under his control and subsequently  
4 attempted to use approximately \$631,500 of the funds to support his personal business  
5 endeavors without Soundpath's knowledge and permission.

6 **D. The Manner and Means of the Scheme**

7 The manner and means used to accomplish the scheme to defraud included the  
8 following:

9 9. On or about September 15, 2011, ZACHARY SMULSKI submitted a  
10 memorandum to Soundpath's Board of Directors recommending that the Board pass a  
11 corporate resolution that authorized him to enter into the sale-leaseback agreement with  
12 Marquette. In the memorandum, ZACHARY SMULSKI represented that funds received  
13 from Marquette would "be placed in a restricted investment account at US Bank." Based,  
14 in part, on ZACHARY SMULSKI's representations, the Board passed a resolution  
15 permitting ZACHARY SMULSKI to enter into the Marquette sale-leaseback agreement.

16 10. Despite having informed Soundpath that the funds from the sale-leaseback  
17 agreement would be placed in a restricted investment account at U.S. Bank, the following  
18 day, on or about September 16, 2011, ZACHARY SMULSKI, purportedly in his capacity  
19 as chief investment officer of Soundpath, prepared and executed a form that authorized  
20 and directed Marquette to transfer funds under the sale-leaseback agreement to Bank of  
21 America account \*5204, located in Seattle, Washington.

22 11. ZACHARY SMULSKI deceived Marquette into believing Bank of  
23 America account \*5204 was a Soundpath account when, in fact, the account belonged to  
24 Trucaris. For example, on September 22, 2011, ZACHARY SMULSKI sent an email  
25 from his Soundpath email account to employees of Marquette regarding the account. In  
26 the email, he wrote, "I had my staff double check with the bank and the bank account is  
27 set up to accept ACHs [(e.g., Automated Clearing House transfers)]." In truth and fact,  
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1 the use of the Trucaris account to receive the funds was carried out without Soundpath's  
2 knowledge and consent.

3 12. After Marquette transferred money to Bank of America Account \*5204 at  
4 ZACHARY SMULSKI's direction, ZACHARY SMULSKI used much of the money to  
5 cover some of Soundpath's financial obligations, but retained control of a portion of the  
6 money. On November 21, 2011, ZACHARY SMULSKI transferred \$24,140.51 of the  
7 diverted funds in the Trucaris account to his spouse's business bank account.

8 13. In order to further divert and conceal the Marquette funds, on December 9,  
9 2011, ZACHARY SMULSKI and his spouse opened an individual investor account with  
10 Merrill Lynch ("account \*2267") under the name Trucaris. On December 26, 2011,  
11 ZACHARY SMULSKI deposited \$620,000.00 of the diverted funds from the Trucaris  
12 Bank of America account into the Trucaris Merrill Lynch investment account.

13 14. Having diverted funds due and owing to Soundpath, ZACHARY  
14 SMULSKI attempted to use approximately \$631,500 of the funds to support his personal  
15 business interests. Among other things, ZACHARY SMULSKI circulated a business  
16 plan for a startup company called "Foundation Health" which claimed the company had  
17 raised \$631,500 in advance funding. The business plan further indicated that Marquette  
18 was an investor in the company. In truth and fact, neither Soundpath nor Marquette had  
19 invested any money in Foundation Health.

20 15. ZACHARY SMULSKI retained control of the \$631,500 until questions  
21 about the Marquette sale-leaseback arrangement were raised during an audit. In April of  
22 2012, Soundpath's controller confronted ZACHARY SMULSKI about missing  
23 paperwork regarding the leaseback arrangement. Shortly afterwards, ZACHARY  
24 SMULSKI produced the missing paperwork and returned the \$631,500 to Soundpath.

25 **E. Execution of the Scheme to Defraud**

26 16. On or about the below-listed dates, at Federal Way, within the Western  
27 District of Washington and elsewhere, ZACHARY SMULSKI, for the purpose of  
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executing the aforementioned scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations, promises and omissions of material facts, and attempting to do so, did knowingly and intentionally cause to be transmitted, in interstate commerce by means of a wire communication, certain signs, signals, and sounds, as described below, each transmission of which constitutes a separate count of this Indictment.

Count	Date	Wire
1	9/22/2011	Email from ZACHARY SMULSKI in the Western District of Washington to Utah directing Marquette to transfer funds to Trucaris' Bank of America Account *5204.
2	9/23/2011	Request for ACH transfer of \$1,394,235 from Marquette's Wells Fargo account in Utah to Trucaris' Bank of America Account *5204 in the Western District of Washington.
3	9/23/2011	Request for ACH transfer of \$311,289.09 from Marquette's Wells Fargo account in Utah to Trucaris' Bank of America Account *5204 in the Western District of Washington.

All in violation of Title 18, United States Code, Sections 1343 and 2.

#### **COUNTS 4-5**

#### **(Money Laundering)**

17. The Grand Jury realleges and incorporates, as if fully set forth herein, Paragraphs 1 - 16 of this Indictment.

1        18.    On or about the dates set forth below, at Tacoma, and elsewhere, within the  
2 Western District of Washington, ZACHARY SMULSKI did knowingly engage in  
3 monetary transactions by, through, and to a financial institution, affecting interstate and  
4 foreign commerce, in criminally-derived property of a value greater than \$10,000, that is  
5 the following deposits, withdrawals, transfers, and exchanges of United States currency,  
6 funds, and monetary instruments in the following amounts, such property having been  
7 derived from a specified unlawful activity, that is wire fraud, in violation of Title 18,  
8 United States Code, Section 1343, each transaction of which constitutes a separate count  
9 of this Indictment:

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Count	Date	Transaction
4	4/17/2012	Issuance of \$610,000 check drawn on Trucaris' Merrill Lynch account *2267 made payable to Trucaris.
5	4/18/2012	Issuance of \$631,500 check drawn on Trucaris Inc.'s Bank of America account *5204 made payable to Soundpath Health.

All in violation of Title 18, United States Code, Section 1957.

A TRUE BILL:

DATED: *Sept 1, 2016*

*Signature of Foreperson Redacted Per  
Policy of Judicial Conference*

\_\_\_\_\_  
FOREPERSON

*Annette L. Hayes*  
\_\_\_\_\_  
ANNETTE L. HAYES  
United States Attorney

*Andrew Friedman*  
\_\_\_\_\_  
ANDREW FRIEDMAN  
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*Francis Franze-Nakamura*  
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Indictment - 7

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